

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *[Signature]* D.C.
05 JUL 13 AM 11:03

REBECCA H. TREACE,)
Plaintiff,)
v.) No. 03-2409 M1/P
UNUM LIFE INSURANCE COMPANY)
OF AMERICA,)
Defendant.)

THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN. MEMPHIS

**ORDER ADOPTING AS AMENDED THE MAGISTRATE JUDGE'S MAY 27, 2005,
REPORT AND RECOMMENDATION**

On April 19, 2005, the Court referred Plaintiff's Renewed Motion for Sanctions and for Modification of the Court's Scheduling Order, filed January 21, 2005, and Plaintiff's Report of Face to Face Meeting Concerning Plaintiff's Renewed Motion for Sanctions and for Modification of the Court's Scheduling Order and Plaintiff's Second Motion for Sanctions, filed March 15, 2005, to the United States Magistrate Judge for report and recommendation. The magistrate judge issued a report and recommendation on May 27, 2005, recommending that Plaintiff's motion be granted in part and denied in part. Plaintiff filed objections on June 13, 2005, to which Defendant responded on June 27, 2005.

Upon *de novo* review of the parties' original motions, the magistrate judge's report, Plaintiff's objections, and

Defendant's response, the Court ADOPTS the magistrate judge's report as amended below.

In his report, the magistrate judge found that Defendant should be sanctioned for its failure to timely produce a telephone log pursuant to Plaintiff's requests and the order of a previous magistrate judge. (See May 27, 2005, Report and Recommendation at 16.) Plaintiff requested, *inter alia*, that monetary sanctions be imposed upon Defendant due to its discovery conduct. The magistrate judge did not assess any monetary sanctions against Defendant for its conduct. As relief, the magistrate judge recommended that discovery in this case be reopened to allow Plaintiff to seek some additional information from Defendant or other third parties. (See May 27, 2005, Report and Recommendation at 18-19.) The Court hereby AMENDS the magistrate judge's report to set the following schedule in this case:

Discovery shall be reopened in this case until November 8, 2005. During that period, Plaintiff may conduct additional discovery on issues relating to telephone calls placed by Plaintiff to Defendant's call center, and Plaintiff may issue third-party subpoenas regarding those telephone calls, if necessary.

Also during that period, Plaintiff may disclose additional expert witnesses. Any such disclosures must be made by September

8, 2005. Defendant shall disclose any additional rebuttal experts by October 8, 2005. Any expert depositions shall be completed by November 8, 2005.

Plaintiff may also notice the depositions of Ralph Mohney and Tim Arnold. Any such notices shall be filed by August 8, 2005. Those depositions shall be completed by November 8, 2005.

In addition, the Court hereby sets the following trial schedule in this case:

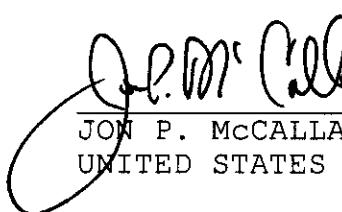
Trial: Monday, December 12, 2005, at 9:30 a.m.

Pretrial Conference: Monday, December 5, 2005, at 8:45 a.m.

Pretrial Order: Monday, November 28, 2005, by 4:30 p.m.

Further, the Court finds that monetary sanctions are appropriate due to Defendant's conduct. Accordingly, Plaintiff is instructed to submit an application for costs and attorney's fees related to its efforts to obtain the telephone logs eventually produced by Defendant.

So ORDERED this 13 day of July, 2005.



JON P. McCALLA
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 260 in case 2:03-CV-02409 was distributed by fax, mail, or direct printing on July 13, 2005 to the parties listed.

John W. Campbell
HUSCH & EPPENBERGER
200 Jefferson Ave.
Ste. 1450
Memphis, TN 38103

R. Scott Vincent
LEITNER WILLIAMS DOOLEY & NAPOLITAN-Memphis
254 Court Ave.
Second Floor
Memphis, TN 38103

James E. King
ESKINS KING, PC
50 N. Front St.
Ste. 1170
Memphis, TN 38103

Bradley W. Eskins
ESKINS KING, PC
50 N. Front St.
Ste. 1170
Memphis, TN 38103

S. Russell Headrick
BAKER DONELSON BEARMAN CALDWELL & BERKOWITZ- Memphis
165 Madison Ave.
Ste. 2000
Memphis, TN 38103

Honorable Jon McCalla
US DISTRICT COURT